

**Letter of Findings Number: 03-20130499P
Withholding Tax-Penalty
For the Period April 2013**

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ISSUE

I. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer had a withholding tax payment for April 2013 that had a due date of May 30, 2013. The Indiana Department of Revenue ("Department") received the withholding tax payment after the due date, and thus a Proposed Assessment with penalty was issued by the Department. Taxpayer protested the penalty. An administrative hearing was held, and this Letter of Findings results. More facts will be provided below as needed.

I. Tax Administration–Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to timely remit withholding tax.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer, in correspondence to the Department, states that the business receives "paper reminders" for things such as "insurance premiums." Taxpayer states:

I have been in business since 1974 and have grown accustom to receiving mail forms and notifications for filing and paying taxes. In recent years this has become an on-line process. The employer is responsible to file a report and make a payment without any notification.

Taxpayer's argument, then, is that it is used to getting reminders in the mail, and is not yet used to the online process. Taxpayer has missed filing deadlines for withholding tax on other occasions (e.g., October 2012 and March 2013 liability periods). Taxpayer has not established any reasonable cause for the late payment at issue, thus Taxpayer has not provided any legal or factual grounds to permit penalty waiver.

FINDING

Taxpayer's protest is denied.

